

**SEVENTH AMENDMENT
to the
PREMIUM BILLING CONTRACT
between
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF HEALTH CARE FINANCE
and
HP ENTERPRISE SERVICES, LLC**

The above referenced agreement was entered into by and between the Kansas Health Policy Authority, hereinafter referred to as KHPA, and Electronic Data Systems, LLC, 5400 Legacy Drive, Plano, Texas 75024, hereinafter referred to as EDS. Effective July 1, 2011 the KHPA was transferred to the Department of Health and Environment, as The Division of Health Care Finance, hereinafter referred to as ("KDHE-DHCF"), in accordance with Executive Reorganization Order No. 38, hereinafter referred to as "ERO No. 38," by Governor Sam Brownback on February 4, 2011. EDS was acquired by HP in August of 2008 and as of January 1, 2010 renamed HP Enterprise Services, LLC, 5400 Legacy Drive, Plano, Texas 75024, hereinafter referred to as HPES. This agreement is hereby amended by agreement of the parties.

1. Background:

The HIPAA Omnibus rule released on January 25, 2013 and effective March 26, 2013, requires all Business Associate Agreements to be replaced in full on or before September 23, 2014.

2. Business Associate Agreement:

Attachment A, titled, "Business Associate Agreement Revised – September 2014," replaces all references and Business Associate Agreement Attachments to the fully executed contract and subsequent amendments.

3. Other:

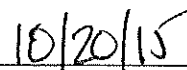
The remaining terms and conditions of the above referenced Original Agreement and any attachments and amendments thereto, shall remain in force and effect and binding on the parties hereto.

IN WITNESS WHEREOF, HPES, KDHE-DHCF, and the Director, Procurements and Contracts, hereto affix their signatures to this Seventh Contract Amendment.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT



Susan Mosier, MD, MBA, FACS
Secretary and State Health Officer



Date

HP ENTERPRISE SERVICES, LLC

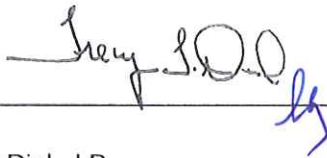


9/21/2015

Tripp Fulton
Account Executive

Date

KANSAS DEPARTMENT OF ADMINISTRATION



11-5-15

Tracy Diel, J.D.
Director, Purchases and Procurement

Date

ATTACHMENT A

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made and entered into by and between the Kansas Department of Health and Environment (hereinafter referred to as "KDHE") and HP Enterprise Services, LLC (hereinafter referred to as "Business Associate").

Notwithstanding Section V of this Business Associate Agreement (hereinafter referred to as "BAA"), the term of this BAA shall be effective as of the last signature date below ("Effective Date") and shall expire as of the expiration date of the Underlying Agreement.

RECITALS

The Parties to this BAA have a relationship whereby KDHE may provide Business Associate access to Protected Health Information (hereinafter referred to as "PHI"), which may include electronic Protected Health Information, that Business Associate will use to fulfill its contractual obligations to KDHE.

KDHE and Business Associate acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), specifically the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and the statutes implementing regulations to maintain the privacy and security of PHI, and the parties intend this BAA to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e).

KDHE is a Hybrid Entity under HIPAA, specifically the Division of Health Care Finance within KDHE containing the Covered Entity functions. Therefore Business Associate is not permitted to use or disclose health information in ways that KDHE could not. This protection continues as long as the data is in the hands of Business Associate. Business Associate acknowledges that for the purposes of this BAA, Business Associate is a "business associate" as that term is defined in 45 CFR § 160.103, and therefore the requirements of HIPAA apply to Business Associate in the same manner that they apply to KDHE pursuant to 42 USC § 17931(a).

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration the parties agree as follows:

I. DEFINITIONS

- a) "Administrative Safeguards" shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of Business Associate's workforce in relation to the protection of that PHI.
- b) "Breach" shall have the same meaning as the term, "Breach" as defined in 45 CFR §164.402.

- c) "Business Associate" shall have the same meaning as the term "Business Associate" as defined in 45 CFR 160.103, and as used in this Agreement, refers to the Business Associate in its capacity as an entity that creates, receives, maintains, or transmits Protected Health Information in providing services to KDHE.
- d) "Data Aggregation Services" shall mean, with respect to PHI created or received by Business Associate in its capacity as a Business Associate of KDHE, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, as defined in 45 CFR § 164.501 and as such term may be amended from time to time in this cited regulation.
- e) "Designated Record Set" shall mean a group of records maintained by or for KDHE that consists of the following: (a) medical records and billing records about Individuals maintained by or for a health care provider; (b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) records used in whole or in part, by or for KDHE to make decisions about Individuals. For these purposes, the term "record" means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for KDHE.
- f) "Disclosure" shall mean the release, transfer, provision of, access to, or divulging in any other manner of PHI outside the entity holding the information.
- g) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services, the HITECH (as defined below) and any future regulations promulgated thereunder, all as may be amended from time to time.
- h) "HITECH Act" shall mean the Health Information Technology for Economic Clinical Health Act, Title VIII of Division A and Title VI of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L.111-5).
- i) "Individual" shall have the same meaning as the term "individual" as defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- j) "Physical Safeguards" shall mean the physical measures, policies and procedures to protect KDHE's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- k) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- l) "Protected Health Information" shall have the same meaning as the term "protected health information", as defined in 45 CFR 160.103 and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of KDHE.

- m) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- n) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.
- o) "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- p) "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164.
- q) "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect PHI and control access to it.
- r) "Underlying Contract" means any written contract for services between KDHE and or the Kansas State Employees Health Care Commission and Business Associate.
- s) "Use" shall mean, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within any entity that maintains such information.
- t) "Unsecured Protected Health Information" or "Unsecured PHI" shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under §13402(h)(2) of Pub.L. 111-5 as defined at 45 CFR §164.402.

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or HITECH or any future regulations promulgated or guidance issued by the Secretary.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
- b) Safeguards to be in Place. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this BAA. Additionally, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of KDHE as required by the Security Rule.
- c) HIPAA Training. Business Associate agrees to ensure all members of its workforce, including subcontractor workforce members, that will or potentially will provide services pursuant to the Underlying Agreement will be appropriately trained on the requirements of HIPAA.

- d) Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Privacy Rule and to communicate in writing, such procedures to KDHE.
- e) Business Associate's Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of KDHE agrees, in writing in the form of a Business Associate Agreement, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information, including implementation of reasonable and appropriate safeguards to protect PHI. Business Associate agrees that it is directly liable for any actions of its subcontractors that results in a violation of this Agreement. Business Associate also agrees to make available to KDHE any contracts or agreements Business Associate has with any subcontractors Business Associate provides PHI under this BAA.
- f) Duty to Provide Access. To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of KDHE, to the PHI in the Designated Record Set to KDHE or, as directed by KDHE, to the Individual, in order to meet the requirements under 45 CFR 164.524. Any denial by Business Associate of access to PHI shall be the responsibility of, and sufficiently addressed by, Business Associate, including, but not limited to, resolution of all appeals and/or complaints arising therefrom.
- g) Amendment of PHI. Business Associate and Covered Entity will mutually agree upon the responsibility of cost of any amendment(s) to PHI in Business Associates possession contained in a Designated Record Set that KDHE directs or agrees to pursuant to 45 CFR 164.526 at the request of KDHE or an Individual, and within a reasonable time and manner. If the required change to PHI is due to a change in regulation or other material change, it will be implemented through the change control process.
- h) Duty to Make Internal Practices Available. Business Associate agrees to make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of KDHE, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining KDHE's compliance with the Privacy Rule.
- i) Documenting Disclosures/Accounting. Business Associate agrees to document any disclosures of PHI and information in its possession related to such disclosures as would be required for KDHE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to KDHE information collected in accordance with Section II(h) of this BAA, to permit KDHE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- j) Reporting Disclosures to KDHE. In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to KDHE any use or disclosure of the PHI not provided for by this BAA or the Privacy Rule of which it or its officers, employees,

agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than three (3) business days after the discovery of such disclosure. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of an unauthorized use, disclosure or security incident.

- k) Notification of Breach. Business Associate shall notify KDHE within twenty-four (24) hours after it, or any of its employees, subcontractors, or agents, reasonably suspects that a breach of unsecured PHI as defined by 45 CFR 164.402 may have occurred, irrespective of any occurrence or non-occurrence of harm. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of a Breach or suspected occurrence of a Breach. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to KDHE. Business Associate shall cooperate with KDHE in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach of unsecured PHI is required by 45 CFR 164.400 *et seq.*, including continuously providing the KDHE with additional information related to the suspected breach as it becomes available. In the event that KDHE informs Business Associate that (i) KDHE has determined that the affected individuals must be notified because a breach of unsecured PHI has occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by KDHE, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that KDHE indicates to Business Associate that KDHE will make the required notification, Business Associate shall promptly take all other actions reasonably requested by KDHE related to the obligation to provide a notification of a breach of unsecured PHI under 45 CFR 164.400 *et seq.* Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims or other damages that Covered Entity, its related corporations, or any of its or their directors, officers, agents, or employees, may sustain as a result of a Business Associate's breach, or Business Associate's subcontractor or agent's breach, of its obligations under this Agreement, per the Limitation of Liability provision of the underlying agreement.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, KDHE for the purposes set forth in III(b), if such use or disclosure of PHI would not violate the Privacy Rule if done by KDHE.
- b) Specific Use and Disclosure Provisions.
1. Business Associate may use and disclose PHI to perform services for KDHE, including specific services, as set out in the Underlying Agreement,

and any additional services necessary to carry out those specific services in the Underlying Agreement.

2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required By Law.

Business Associate may only de-identify PHI in its possession obtained from KDHE with KDHE's prior written consent, in accordance with all de-identification requirements of the Privacy Rule.

3. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). KDHE shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.
4. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to KDHE.
5. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of KDHE and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to KDHE under this Agreement and the Underlying Agreement.

IV. OBLIGATIONS OF KDHE

- a) KDHE shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of KDHE in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) KDHE shall notify Business Associate in a timely manner of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
- c) KDHE shall notify Business Associate in a timely manner of any restriction to the use and/or disclosure of PHI, which KDHE has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) KDHE shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Rule if done by KDHE.
- e) KDHE agrees to disclose to Business Associate only the minimum amount of PHI necessary to accomplish the services covered in the underlying agreement.

- f) KDHE agrees that, in addition to obligations Required By Law, Business Associate provides services in the underlying agreement on the express condition that KDHE fulfills its obligations set forth therein.

V. TERMINATION

- a) Term. This Agreement shall be effective as of the Effective Date and shall terminate upon termination or expiration of the Underlying Contract and when all of the PHI provided by KDHE to Business Associate, or created or received by Business Associate on behalf of KDHE, is destroyed or returned to KDHE, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions of Section (V)(c)(2).
- b) Termination for Cause. Upon either party's knowledge of a material breach by the other party, such party shall either:
1. Provide an opportunity for the breaching party to cure the breach, end the violation, or terminate this Agreement if the breaching party does not cure the breach or end the violation within five (5) business days;
 2. Immediately terminate the Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- c) Effect of Termination.
1. Except as provided in paragraph V(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from KDHE, or created or received by Business Associate on behalf of KDHE. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to KDHE notification in writing of the conditions that make return or destruction infeasible. Upon verification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to KDHE and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

- d) Judicial or Administrative Proceedings. Notwithstanding any other provision herein, KDHE may terminate the applicable Underlying Agreement, effective immediately, upon a finding or stipulation that Business Associate violated any applicable standard or requirement of the Privacy Rule or the Security Rule or any other applicable laws related to the security or privacy of PHI, relating to the Underlying Agreement, in any criminal, administrative or civil proceeding in which the Business Associate is a named party.

VI. MISCELLANEOUS

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties, except as set forth in Section VI(l) below.
- c) Indemnification. Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Covered Entity incurs arising from a violation by Business Associate, or a subcontractor or agent of Business Associate, of its obligations hereunder, per the Limitation of Liability provision of the underlying agreement.
- d) Survival. The respective obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- e) Interpretation. Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits KDHE to comply with the Privacy Rule, the Security Rule, and the ARRA.
- f) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than KDHE and its respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- g) Notices. Any notices to be given to either party under this Agreement shall be made in writing and delivered via e-mail at the address given below:

Business Associate: Tripp Fulton, tripp.fulton-iii@hpe.com

Covered Entity: Cory V. Sheedy, csheedy@kdheks.gov

- h) Headings. The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this Agreement.

- i) Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Kansas, without giving effect to its conflict of law provisions.
- j) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- k) Effect on Underlying Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.
- l) Modification. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state and federal laws relating to the security or confidentiality of PHI as determined solely by KDHE.

In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this Agreement, the parties agree to negotiate in good faith any necessary or appropriate revisions to this Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately, either party, , may unilaterally amend this Agreement to comply with the change in law upon written notice to the other party.

VII. OBLIGATIONS OF BUSINESS ASSOCIATE PURSUANT TO HITECH

- a) Access to PHI in an Electronic Format. If Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate must provide access to such information in an electronic format if so requested by an Individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an Individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the KDHE in writing of such request.
- b) Prohibition on Marketing Activities. Business Associate shall not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Underlying Agreement and are made in accordance with HITECH or any future regulations promulgated thereunder. Notwithstanding the foregoing, any payment for marketing activities should be in accordance with HITECH or any future regulations promulgated thereunder.
- c) Application of the Security Rule to Business Associate. Business Associate shall abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:

(i) Adopt written policies and procedures to implement the same administrative, physical, and technical safeguards required of the KDHE; and

(ii) Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.

If Business Associate violates the Security Rule, it acknowledges that it is directly subject to civil and criminal penalties.

VIII. ADDITIONAL OBLIGATIONS OF BUSINESS ASSOCIATE


Business Associate shall not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Underlying Agreement and in accordance with HITECH and any future regulations promulgated thereunder.

IX. ENFORCEMENT


Business Associate acknowledges that, in the event it, or its subcontractor or agent, violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement as of the date reflected below.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:

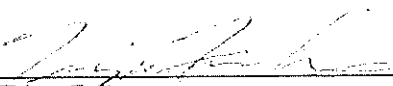


Susan Mosier, MD, MBA, FACS
Secretary and State Health Officer

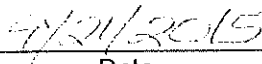


Date

BUSINESS ASSOCIATE:

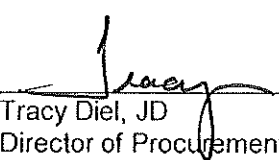


Tripp Fulton
Account Executive
HP Enterprise Services, LLC



Date

KANSAS DEPARTMENT OF ADMINISTRATION


Tracy Diel, JD
Director of Procurement and Contracts

11/5/15
Date

